IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3054 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

VANMALIBEN TRIBHUVANDAS PATEL

Versus

STATE OF GUJARAT

Appearance:

Kum. V.P. Shah, Advocate, for the Petitioners

Shri A.G. Uraizee, Assistant Government Pleader, for the Respondents

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 27/08/96

ORAL JUDGEMENT

The order passed by and on behalf of the State Government (respondent No. 1 herein) on 26th May 1994 under sec. 34 of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) is under challenge in this petition under art. 226 of the Constitution of India. By its impugned order, respondent No.1 set aside the

order passed by the Competent Authority at Surat (respondent No.2 herein) on 26th September 1989 (communicated some time in October 1989) under sec. 8(4) thereof. By his aforesaid order, respondent No.2 ordered to file the declaration filed by and on behalf of the petitioners under sec. 6(1) of the Act on the ground that the holding of neither of them was in excess of the ceiling limit.

2. The facts giving rise to this petition move in a narrow compass. The petitioners filed their separate declarations in the prescribed form under sec. 6(1) of the Act. Both of them showed their one-half share each in one parcel of land bearing survey No. 126(part) admeasuring 4654 square meters situated at Katargam within the urban agglomeration of Surat (the disputed land for convenience). Those forms were processed by respondent No. 2. After observing necessary formalities under sec. 8 of the Act, by his order passed on 26th September 1989 under sub-section (4) thereof, respondent No. 2 came to the conclusion that the holding of neither petitioner was in excess of the ceiling limit. He therefore ordered closure of the proceeding. Its copy is at Annexure F to this petition. It appears to have come to the notice of the concerned officer of respondent No. 1. He appears to have found it not according to law. Its suo motu revision under sec. 34 of the Act was therefore contemplated. A show-cause notice thereupon came to be issued on 17th June 1992 calling upon petitioner No.1 to show cause why the order at Annexure F to this petition should not be revised. Its copy is at Annexure H to this petition. After hearing the parties, by the order passed by and on behalf of respondent No.1 on 26th May 1994, the order at Annexure F to this petition came to be set aside and the holding of petitioner No. 1 came to be declared in excess of the ceiling limit by 3154 square meters. Its copy is at Annexure I to this petition. It appears that the petitioners thereupon moved the State Government for its review. By one communication of 2nd December 1994, the petitioners were informed that no review thereof was possible. Its copy is at Annexure J to this petition. The aggrieved petitioners have thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure I to this petition.

3. As rightly submitted by learned Advocate Kum. Shah for the petitioners, a son has a right by birth in the ancestral property in the hands of his father according to well-settled principles of Hindu law. It

transpires from the impugned order at Annexure I to this petition that the property in the name of petitioner No.1 was received by him in partition of the ancestral properties amongst co-parceners. Even if the name of petitioner No.2 was not shown in the revenue records with respect thereto, the property in the hands of petitioner No.1 was an ancestral property. According to well-settled principles of Hindu law, as a son of petitioner No.1, petitioner No.2 had a right therein from the date of his birth. It is not in dispute that petitioner No.2 was not a minor on the date of coming into force of the Act. In that case, as rightly submitted by Kum. Shah for the petitioners, petitioner No.1 would be entitled to claim two ceiling units under the Act. In the alternative, since both the petitioners have filed their separate declarations in the prescribed form under sec. 6(1) of the Act, each petitioner can be said to be having his one-half share in the disputed land. Since the impugned order at Annexure I to this petition has taken the disputed land to be of the exclusive ownership of petitioner No.1, that finding cannot be sustained.

4. It appears that the Maintenance Surveyor had given report regarding passing of the road through the disputed lands and on that basis respondent No.2 had excluded the area covered by the road and margin to the road from the disputed land for the purpose of coming to the conclusion that the holding of each petitioner was not in excess of the ceiling limit. The author of the impugned order at Annexure I to this petition has doubted the correctness of the Maintenance Surveyor's report. That apart, the author of the impugned order at Annexure I to this petition has also indicated that the Maintenance Surveyor's report was with respect to the position of the land as in 1989 and not as on the date of coming into force of the Act. So far as doubting correctness of the Maintenance Surveyor's report is concerned, it appears that the author of the impugned order at Annexure I to this petition has remained oblivious to the Manual of Land Records Department based on the relevant provisions contained in Sections 120, 121 and 122 of the Bombay Land Revenue Code, 1879. Para 4 of Chapter V in part 2 of the Manual of Land Records Department would be very relevant for the purpose. A Maintenance Surveyor prepares his report as a part of his official functions. Section 114 of the Indian Evidence Act, 1872 raises presumption inter alia about official acts as to their regular performance. In that view of the matter, the author of the impugned order at Annexure I to this petition was not justified in doubting the

correctness of the Maintenance Surveyor's report.

5. If it was found that the Maintenance Surveyor's report was with respect to position of the land as was in 1989 and not as it was on the date of commencement of the Act, it would have been desirable on the part of the author of the impugned order at Annexure I to this petition to have remanded the matter to respondent No.2 rather than himself coming to the conclusion that no road passed through the disputed land at the relevant time. To that extent, the impugned order at Annexure I to this petition cannot be sustained in law.

6. Learned Advocate Kum. Shah for the petitioners has then urged that construction upto the plinth level was in existence in the disputed land on the strength of the building permission obtained from the local authority in 1975. The author of the impugned order at Annexure I to this petition has not believed this case of the petitioners on the ground of absence of its mention in the Maintenance Surveyor's report though mention of such construction was found made in the revenue records by means of Village Form No. 7/12 popularly known as panipatraks. In that case it would have been more desirable on the part of the author of the impugned order at Annexure I to this petition to have remanded the matter to respondent No.2 for his fact-finding inquiry on the point.

7. The author of the impugned order at Annexure I to this petition has disbelieved the case of construction in existence on the date of coming into force of the Act on the ground that the panipatraks showed use of the disputed land for agricultural purposes. If that be so, learned Advocate Kum. Shah for the petitioners is right in her submission that the benefit of the binding ruling of the Supreme Court in the case of Smt. Atia Mohammadi Begum v. State of U.P. and others reported in AIR 1993 SC 2465 should have been given to the petitioners. As rightly submitted by learned Assistant Government Pleader Shri Uraizee for the respondents, the applicability of the aforesaid binding ruling of the Supreme Court will require investigation into three material facts. In the first place, it has to be found out whether or not any master plan answering its definition contained in sec. 2(h) of the Act was in existence with respect to the area in question. Secondly, what the situation of the disputed land was in such master plan if it was found in existence. Thirdly, an inquiry will have to be made whether or not agricultural operations were in fact carried on in the disputed land on the date of

commencement of the Act. Since the attention of the authorities below was not focussed on this aspect of the case, it is desirable that the fact-situation in this regard is investigated into by respondent No.2.

8. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure I to this petition cannot be sustained in law. Since certain facts require investigation into, the order at Annexure F to this petition cannot be restored. The matter will have to be remanded to respondent No.2 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. It will be open to the petitioners to bring on record additional material for the purpose of enabling respondent No.2 to arrive at a correct decision.

9. In the result, this petition is accepted. The order passed by and on behalf of the State Government on 26th May 1994 at Annexure I to this petition is quashed and set aside. The matter is remanded to the Competent Authority at Surat for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
